

2013 WL 5176733 (Del.Ch.) (Trial Pleading)
Chancery Court of Delaware.

HOGAN & VEITH, P.A., d/b/a The Hogan Firm, Petitioner,

v.

Theodore C. FUGEE, III, Administrator of the Helen E. Fugee Estate, Respondent.

No. 8892-ML.
September 12, 2013.

Petition for Rule to Show Cause to Compel Sale of Real Estate

[W. Wade W. Scott](#) (#2390), The Delaware **Elder** Law Center, 2961 Centerville Road, Suite 310, Wilmington, DE 19808, (302) 300-4390, Attorney for Petitioner.

NOW COMES THE PETITIONER, Hogan & Veith, P.A. d/b/a The Hogan Firm (hereinafter, "Petitioner"), by and through the undersigned counsel, to ask this honorable court to command the appearance of Theodore C. Fugee, III, (hereinafter, "Respondent") to Show Cause why he has not sold the real estate known as 501 Redfern Avenue, Wilmington, DE 19807 (hereinafter, the "Property"), to pay off debts of the Helen E. Fugee Estate (hereinafter, the "Estate"), as follows:

1. Respondent is an adult individual residing in the State of Delaware. Service of process may be made upon Respondent at 501 Redfern Avenue, Wilmington, DE 19807.
2. Petitioner is Hogan & Veith, P.A. d/b/a The Hogan Firm, a Delaware professional association having its principal place of business at 1311 Delaware Avenue, Wilmington, DE 19806.
3. The Delaware Chancery Court has personal and subject matter jurisdiction pursuant to [10 Del.C. §341](#) and as effectuated by [Chancery Court Rule 207](#).
4. On January 7, 2007, IKOR, USA was appointed guardian of the person and property for Helen E. Fugee. Petitioner, by and through W. Wade W. Scott, Esquire, represented IKOR as guardian in a Rule to Show Cause hearing held in October 2008.
5. After the Rule to Show Cause ended, IKOR petitioned the Chancery Court for payment of its fees for work done during period January 2007 - October 2008. The Court appointed an attorney *ad litem* to review the fee application and make recommendations concerning payment. The attorney *ad litem* raised an issue of improper billing practice, which was resolved by IKOR agreeing to accept \$57,139.46 as full payment for its work. On September 23, 2009, IKOR assigned fees due to it from the guardianship account in the amount of \$57,139.46 to Petitioner.
6. On September 25, 2009, the Court entered a final order allowing IKOR to withdraw as guardian and appointing Respondent as successor guardian. As part of the final order, Respondent, in his capacity as guardian, was ordered to pay Petitioner \$63,213.21 from the guardianship bank account.¹ The order was entered as a judgment on December 9, 2009, in Judgment Record No. 09J-N02026. See a copy of the judgment attached hereto as *Exhibit A*.
7. On or about November 6, 2009, Respondent paid Petitioner \$23,400.00, bringing the total unpaid balance to \$39,813.21.
8. Helen E. Fugee died testate on November 23, 2009. Her immediate next of kin were her son, Theodore C. Fugee, III, and her daughter, Helen E. Hctor. Respondent was appointed personal representative of the Estate on or about March 19, 2010.

9. On or about January 14, 2010, Petitioner filed a claim against the Estate in the amount of \$39,813.21. See *Exhibit B*.

10. The Estate Inventory that was filed on July 29, 2010, reported date of death values of the Estate's probate and non-probate assets as \$578,061.03. The real property, as the nonprobate asset, was appraised at \$550,000.00. See *Exhibit C*.

11. The debts of the Estate consist of Petitioner's claim of \$39,813.21, a judgment in favor of HCR-Manor Care for \$6,495.30, and a judgment in favor of Financial Freedom Acquisition, LLC for \$403,677.13. A true and correct copy of the most recent title search is attached hereto as *Exhibit D*. The Estate does not have sufficient liquid assets to pay these claims. Financial Freedom Acquisition, LLC has started foreclosure proceedings.

12. The Property has been on the market for over four (4) years. For the period of 2010-2012, Respondent listed the Property at the unrealistically high price of \$750,000.00. This price is \$200,000.00 over the date of death value of the home. On information and belief, no offer was received during this time period. On information and belief, Respondent finally lowered the listing price to \$565,000.00 in 2013. Again, no one has made an offer to purchase the home. Over the past four (4) years, Respondent has allowed the Property to lose its curb appeal by failing to properly maintain the hedges and allowing the yard to become unkempt. He regularly parks five cars in front of the house further diminishing the curb appeal of the home and impacting the curb appeal of the other homes for sale in the neighborhood. One of the cars is located in the driveway with a clear plastic tarp over it.

13. The Property is located in the neighborhood of Westmoreland which is bounded by DuPont Road. This is a desirable neighborhood because of its location. There is a reasonable expectation that the house could sell for a price sufficient to pay off all the claims of the estate.

14. Pursuant to [12 Del. C. §2702](#), as a debtor of the Estate, Petitioner has the right to force the sale of the Property at a reasonable price in order to receive payment if there are not enough liquid assets to do so.

COUNT I - DUTY OF PRUDENCE

15. Paragraphs 1-13 are incorporated herein by reference.

16. A fiduciary must administer the Estate as a prudent person would, exercising reasonable skill, care and caution. An executor has a duty to pay valid claims of the estate.

16. Respondent has violated his duty of prudence by **neglecting** the administration of the estate. He has failed to take sufficient steps to maintain the Property such that it has appeal to potential buyers and has failed to list the Property at a reasonable price commensurate with market conditions and the duty to pay the debts of the estate. Respondent has exhibited an "I don't care attitude" that is reflected in his failure to administer the Estate prudently such that the Register of Wills filed a Rule to Show Cause as to why the Final Accounting, due on March 19, 2011, has not been filed. Further, Respondent continues to allow the Property to deteriorate in the face of his duty to protect and maintain the Property such that it can be sold at a price high enough to pay of the debts of the Estate. Finally, Respondent is content to allow the Property to be foreclosed upon to the detriment of Petitioner because in doing so, he will not have to take any action except to sit by and allow it to happen.

WHEREFORE, the Estate of Helen E. Fugee lacks sufficient assets to pay its debts, and Petitioner therefor respectfully prays for the following relief:

- a. That a Rule to Show Cause hearing be scheduled as soon as practicable;
- b. That Respondent be ordered to take corrective action to maintain the Property to maximize its appeal to buyers;

c. That Respondent immediately lower the listing price for the Property to the point that a private buyer makes an offer at least at a price sufficient to pay the debts of the estate;

d. That Petitioner inspect the property; and

e. That Petitioner be appointed to oversee the sale process such that a successful private sale is consummated.

Dated: September 10, 2013

/s/ W. Wade W. Scott

W. Wade W. Scott (#2390)

THE DELAWARE **ELDER** LAW CENTER

2961 Centerville Road, Suite 310

Wilmington, DE 19808

(302) 300-4390

Attorney for Petitioner

Footnotes

- ¹ The \$63,213.21 consisted of two parts: (1) \$57,139.46 to Petitioner representing IKOR's fees that it assigned to Petitioner and (2) \$6,073.75 representing attorney fees awarded to W. Wade W. Scott, Esquire as counsel to IKOR.